

Before the
United States Department of Transportation
Research and Special Programs Administration
49 CFR Part 177
Federal Motor Carrier Safety Administration
49 CFR 397

Submission of Comments

In Re:

Docket No. FMCSA – 02-11650 (HM-232A)
Security Requirements for Motor Carriers Transporting Hazardous Materials

On Behalf of the
National Paint and Coatings Association, Inc.

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I. Statement of the Issue

The Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §5100 et. seq amended in November, 1990, by the Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101-615) (HMTUSA), requires that the Secretary of Transportation “prescribe regulations for the safe transportation of hazardous material in intrastate, interstate and foreign commerce.” The Secretary's responsibility with regard to this matter has been delegated to the Department of Transportation's (DOT) Research and Special Programs Administration (RSPA).

RSPA's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The hazardous materials regulations (HMR) are designed to achieve two goals: (1) to ensure that hazardous materials are packaged and handled safely during transportation, minimizing the possibility of their release should an incident occur; and

(2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported.

The HMR do not, however, specifically address risks associated with the intentional release of hazardous materials, or in other words, the 'security' of hazardous materials. HM-232 was the first rulemaking to specifically address 'security' in the aftermath of the terrorist attacks last year. While NPCA shares RSPA desire to expedite enhancements to the security of hazardous materials transportation, we are concerned that implementation of the proposed requirements in HM-232 will not result in increased security. After reviewing the proposed activities in HM-232A, we remain concerned and urge RSPA and FMCSA's to appropriately focus the consideration of certain requirements where the risks are the greatest.

This Advanced Notice of Proposed Rulemaking (ANPRM) is seeking comments on the "feasibility" of specific security enhancements and the potential costs and benefits of deploying such requirements as escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications and notification to local authorities. RSPA and FMCSA also invite commenters to submit specific data and cost information on a long list of items relative to 'enhanced security.'

II. Statement of Interest

The National Paint and Coatings Association, Inc. (NPCA) is a voluntary non-profit industry association, originally organized in 1888 and comprising today of some 400 members who are engaged in the manufacture and distribution of paint and related products. The membership collectively produces about 75% of the total national volume of paints and allied products.

Overall, the paint and coatings industry is comprised of approximately 900 manufacturing facilities which collectively produce more than one billion gallons annually. The paint and coatings industry utilizes all transportation modes to distribute products throughout the nation, although the bulk of the industry's products are shipped by motor and rail vehicles. Therefore, NPCA and the industry are very interested in helping RSPA maintain the safety *and* security of hazardous materials shipments.

NPCA believes very strongly in the goal of the HMTA -- because of the hazardous nature of the products, it is extremely important that uniform national regulations govern specific transportation-related activities in order to promote safety and minimize any confusion regarding regulatory compliance.

NPCA has a long history of assisting DOT with complex regulatory questions and the industry looks forward to a continuing rapport with RSPA.

III. Comments

While NPCA shares the desire to enhance the security of hazardous materials transportation, we urge RSPA and FMCSA to consider the differing risks presented by the entire range of hazardous materials and recognize that, in instances where small quantities or low risk materials are involved, 'enhanced security procedures' are not beneficial.

RSPA and FMCSA are studying these options because hazardous materials in transit are uniquely vulnerable to subversion and, it is believed that implementation of some or all of these options will help assure public safety. While NPCA shares RSPA's and FMCSA's desire to enhance the safety and security of hazardous shipments during transit, these proposals or options do not make sense for the entire universe of persons required to register under Subpart G of Part 107 or even the entire universe of hazardous materials in transit. The paint and coatings industry is a good example to consider. Some in our industry are required to register because they manufacture and distribute coatings products or raw materials for coatings products in bulk containers that fall primarily in Class 3 or Class 8 hazard classes. Others, however, are required to register under the hazardous materials registration program because they ship an occasional load of product that is required to be placarded under the HMR.¹

While RSPA and FMCSA warn that the data collected from this ANPRM could result in a notice of proposed rulemaking that could apply to shippers and carriers of certain high-risk hazardous materials and bulk shipments of flammable liquids and gases, this indication is not mentioned until Section III of the notification and even in this section, it is noted that these security measures could be applied more broadly to other modes.

NPCA urges RSPA and FMCSA to be careful to discuss these kinds of proposals or enhanced security requirements solely in the context of high hazard materials.

Specific Comments

Pre-notification to state and/or local authorities prior to transportation of hazardous materials through their jurisdiction: There are two problems with requiring pre-notification to officials: first, such a requirement would be a logistical and jurisdictional nightmare for both the shipper and the carrier, and second, public dissemination of the whereabouts of highly hazardous materials could lead wrongdoers directly to the material that we are trying to protect.

In addition, there is also a concern that state and local agencies do not currently have the resources to manage the influx of such sensitive information. In a discussion about this issue recently, one of our members related a story about an effort to alert the local

¹ Many in our industry are shipping products that are approximately 85% latex and even when the shipments contain predominantly flammable or combustible goods, the shipment is typically interspersed with latex/waterborne products.

authorities to the movement of highly hazardous material through their jurisdiction. In response to a telephone call, the local authority told the member company that ‘they did not want to know about the shipment or its route unless there was a problem.’

Armed escorts: Requiring armed escorts for hazardous materials shipments is not appropriate.

Vehicle tracking technologies: There may be some role for remote vehicle tracking technologies in moving highly hazardous materials. Some shippers and/or carriers are currently using different forms of vehicle tracking in order to monitor shipments. The reliability of these technologies, however, are varied due to factors such as the weather and traffic. More research and study of these systems may be necessary before such a requirement is implemented.

Anti-theft devices: Technologies and devices that prevent the theft of equipment and the hazardous cargo can be extremely helpful. Some, however, can be problematic if triggered inadvertently or mistakenly and could potentially lead to very unsafe conditions for the driver and bystanders. Consequently, there is a desire to explore some of these devices, such as panic buttons and certain remote shutoff devices for drivers, but there is also the need to proceed with caution with regard to other remote shutoff devices because of the potential for error.

Whether specific physical security measures should be limited to certain highly hazardous materials and, if so, which highly hazardous materials might warrant specific security measures? Only those hazardous materials which present the greatest risk and those that are attractive materials for use as a weapon of mass destruction should be required to implement certain physical security measures. NPCA urges RSPA and FMCSA to consider the high hazard materials articulated in the placarding instructions in 49 CFR 172.504, commonly referred to as the Table 1 materials, when shipped in bulk quantities.

IV. Conclusion

While our industry is keen on improving the safety and security of hazardous materials in transit, we urge RSPA and FMCSA to keep in mind the wide range of products that are regulated as hazardous materials and remember that not all products present the same risk. For instance, an LTL shipment of paint products, even if they were a Class 3, Packing Group I shipment, cannot easily be used as a weapon. Consequently, we recommend that the adoption of any enhanced security protocols be based upon risk and appropriately tailored to that risk.

NPCA and its Transportation and Distribution Committee are pleased to have this opportunity to comment on this ANPRM. We look forward to continuing to work with RSPA in the future on this and any other matters affecting the paint and coatings industry.

Respectfully submitted,

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